

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of

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CC Docket No. 99-216 /

2000 Biennial Regulatory Review of Part 68 of
the Commission's Rules and Regulations

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REPORT AND ORDER

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By the Commission:

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I. INTRODUCTION

1. In the Telecommunications Act of 1996 (1996 Act), Congress directed the Commission to review its rules every even-numbered year and repeal or modify those found to be no longer in the public interest.¹ Consistent with the directive of Congress, in the year 2000, the Commission undertook its second comprehensive biennial review of the Commission's rules to eliminate regulations that are no longer necessary because the public interest can be better served through reliance on market forces.² In

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 *et seq.* (1996 Act). Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code. The 1996 Act amended the Communications Act of 1934. We refer to the Communications Act of 1934, as amended, as the "Communications Act" or the "Act." The Biennial Review of Regulations is codified at 47 U.S.C. §61.

² See *Federal Communications Commission Announces Substantial Progress on Biennial Review to Repeal Unnecessary Regulations*, FCC News Release (rel. May 15, 2000).

this Order, we completely eliminate significant portions of Part 68 of our rules governing the connection of customer premises equipment (terminal equipment) to the public switched telephone network and privatize the standards development and terminal equipment approval processes. By these actions, we minimize or eliminate the role of the government in these processes.

2. Specifically, in this Order we eliminate the detailed regulations currently in our rules establishing technical criteria for terminal equipment and requiring registration of terminal equipment with the Commission. Given the maturity of the terminal equipment manufacturing market, we find that Standards Development Organizations (SDOs) that are accredited by the American National Standards Institute (ANSI), and that incorporate a balance of industry representatives including both the terminal equipment manufacturing industry and the telecommunications carrier industry, should be responsible for establishing technical criteria to ensure that terminal equipment does not harm the public switched telephone network. We find, moreover, that a private industry committee ("Administrative Council for Terminal Attachments" (Administrative Council)) shall be responsible for compiling and publishing all standards ultimately adopted as technical criteria for terminal equipment.

3. With regard to equipment approval, we find that manufacturers may show compliance with the technical criteria through one of two means. First, manufacturers may seek approval of terminal equipment's compliance with the relevant technical criteria from private Telecommunications Certification Bodies (TCBs). In the alternative, manufacturers may show compliance through the Supplier's Declaration of Conformity (SDoC) method of equipment approval.

4. The streamlined approach outlined in this Order will allow the Commission to replace approximately 130 pages of technical criteria currently in our rules with only a few pages of simple principles that terminal equipment shall not cause any of the prescribed harms to the public switched telephone network, that providers of telecommunications must allow the connection of compliant terminal equipment to their networks, and that the Commission diligently will enforce compliance with these rules. This streamlined approach relies on the common vested interest of terminal equipment manufacturers and providers of telecommunications in safeguarding the public switched telephone network to eliminate the need for direct government involvement in establishing technical criteria for terminal equipment and in registering or approving terminal equipment that meets those technical criteria. In addition, we retain in our rules the technical criteria relating to inside wiring, hearing aid compatibility and volume control, and consumer protection provisions. We also maintain enforcement procedures for terminal equipment compliance and an appeal procedure for the Administrative Council's decisions. Finally, we update the complaint procedures for our hearing aid compatibility and volume control rules.

5. The new regulatory paradigm that we adopt in this Order for terminal equipment interconnection shall function as follows. We will maintain our rules' broad principles, including a proscription against causing any of four harms to the public switched telephone network by the direct connection of terminal equipment. A single committee, the Administrative Council, sponsored by an ANSI-accredited entity, shall adopt, compile and publish specific technical criteria for terminal equipment in furtherance of the Commission's broad principles. Any ANSI-accredited standards-development organization may submit technical criteria for terminal equipment. Once the Administrative Council publishes such criteria, the Commission shall presume the criteria to be valid for the prevention of the harms to the public switched telephone network by terminal equipment interconnection, subject to *de novo* review by petition to this Commission.

6. Conformance with the technical criteria will be considered a demonstration of compliance with the Commission's rules prohibiting terminal equipment from harming the public switched telephone network. Terminal equipment manufacturers either will submit their products to TCBs for certification of conformity with the technical criteria (instead of submitting them for registration with the Commission), or

they will use the Supplier's Declaration of Conformity process to show conformity with the technical criteria. The Administrative Council will work with the TCBs to develop labeling and other non-technical requirements. We believe that this process will be more efficient and responsive to the needs of all segments of the industry, and remove the Commission from a role where governmental involvement is no longer necessary or in the public interest.

II. BACKGROUND

7. Before the Commission established its rules in Part 68, terminal equipment was manufactured almost exclusively by Western Electric, which was part of the Bell System of companies that included the monopoly local exchange and long distance providers in most parts of the country. This ensured that no harmful terminal equipment was connected to the public switched telephone network, but also created a monopoly in the development and manufacture of terminal equipment. The Part 68 rules are premised on a compromise whereby providers are required to allow terminal equipment manufactured by anyone to be connected to their networks, provided that the terminal equipment has been shown to meet the technical criteria for preventing network harm that are established in the Part 68 rules.³ Thus, although our Part 68 rules appear to establish elaborate requirements for terminal equipment manufacturers, the fundamental obligation that the rules impose is on the local exchange carriers -- they must allow Part 68-compliant terminal equipment to be connected freely to their networks.⁴ Terminal equipment manufacturers are not required to comply with Part 68, but equipment that is not Part 68-registered is not freely connectable to the public switched telephone network and thus has limited marketability. Our rules have facilitated a vibrant, competitive market for terminal equipment, reducing prices and resulting in a proliferation of new equipment and capabilities available to consumers.

8. At the time the Commission established its Part 68 rules, AT&T controlled the terminal equipment market as well as the public switched telephone network itself. Few entities outside of the telephone company had extensive knowledge about the interaction of terminal equipment and the public switched telephone network, and there appeared to be no private standard-setting bodies or testing laboratories with expertise in terminal equipment. The adoption of standards by individual state regulatory commissions was not a viable option at the time. Given this market condition, the Commission took upon itself the obligations of both establishing technical criteria to ensure that terminal equipment would not harm the network and verifying that specific terminal equipment complied with the technical criteria.

9. Taking account of AT&T's near monopoly on technical expertise in the 1970s, the Commission included in its Part 68 rules detailed technical information, including drawings and schematics of terminal equipment circuitry and interconnection devices. The initial Part 68 rules were based, in large measure, on the existing internal carrier technical standards at that time. Although they contain detailed technical criteria, the Part 68 rules do not generally seek to ensure the quality, performance, or interoperability of interconnected networks.⁵

³ *In the Matter of 2000 Biennial Review of Part 68 of the Commission's Rules and Regulations*, CC Docket No. 99-216, Notice of Proposed Rulemaking, 15 F.C.C.R. 10525 at 10528, para. 5 (2000) (*Notice*).

⁴ Part 68's regulation of terminal equipment is narrowly drawn and applies only to equipment directly connected to the public switched telephone network on the customer's side of the demarcation point.

⁵ With few exceptions, quality and performance factors of terminal equipment are served by consumer protection laws and by the operation of the free market. To the limited extent that Part 68 addresses these functions (e.g., inside wire), we do not propose at this time to privatize them because we recently adopted these rules to protect against demonstrated problems in the market. See *infra* para. 65.

10. Part 68 of the Commission's rules establishes technical criteria designed to ensure that terminal equipment does not harm the public switched telephone network or telephone company personnel, and a registration process to verify whether terminal equipment complies with these criteria. Part 68 requires carriers to allow terminal equipment that is registered as Part 68 compliant to be connected to their networks.⁶ Thus, our Part 68 rules establish requirements for terminal equipment manufacturers and impose on carriers the requirement that they allow Part-68 compliant terminal equipment to be connected freely to their networks.

11. In the years since Part 68 was established, however, the marketplaces for both terminal equipment and local exchange service have changed dramatically. Vibrant competition has emerged in the terminal equipment marketplace. Basic voice telephones and new types of terminal equipment, including advanced telephones, computer modems, and equipment for individuals with disabilities, have become widely and competitively available. Private standards-setting bodies and testing laboratories for telecommunications equipment have also become well established, and the terminal equipment-manufacturing industry has matured and plays a strong and active role in them. In more recent years, this Commission has relied on the work of these industry bodies to update the technical criteria in Part 68. For example, TIA Committee TR41 undertook to develop harmonized network protection rules between the U.S. and Canada, and proposed them for a rulemaking proceeding.⁷ The rapid pace of change in both network and terminal equipment technologies, however, has made it increasingly difficult for the regulatory process to keep pace.

12. Because of these market changes, as well as our overall mandate to eliminate regulations wherever possible, consistent with the public interest,⁸ this Commission's approach to regulation of Part 68 equipment has also changed significantly. To this end we have recently enacted rules that allow manufactures to have their equipment certified as compliant with Part 68 not only by the Commission, but also, as an alternative, by any of a multitude of TCBs as well.⁹ We have also adopted uniform, or "harmonized," technical criteria for protection of the wireline network consistent with the protections used in Canada.¹⁰ In the *Notice*, we proposed alternative approaches to reducing the Commission's role in regulating the interconnection of terminal equipment to the public switched telephone network by relying to a greater extent on industry standards-setting bodies. We first discussed ways to allow industry standards-setting organizations to take over the establishment of the Commission's technical criteria for terminal equipment currently set forth in the Commission's Part 68 rules. We then discussed alternatives for removing the Commission from the role of verifying terminal equipment's compliance with the relevant technical criteria, which occurs currently through the Part 68 registration process.¹¹

⁶ Prior to the adoption of Part 68, AT&T generally only permitted its customers to connect terminal equipment that AT&T supplied itself, giving AT&T monopoly control of the terminal equipment market.

⁷ *Amendment of Part 68 of the Commission's Rules*, CC Docket No. 96-28, Report and Order, 12 FCC Rcd 19218 (1997) (*Harmonization Order*).

⁸ See preamble of Telecommunications Act of 1996 ("...to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.")

⁹ *1998 Biennial Regulatory Review – Amendment of Parts 2, 25, and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements*, GEN Docket No. 98-68, Report and Order, 13 F.C.C.R. 24687 (1998) (*MRA Order*); 68 C.F.R. §§ 68.160, 68.162.

¹⁰ See generally *Harmonization Order*, 12 FCC Rcd 19218.

¹¹ *Notice*, 15 FCC Rcd at 10531, para. 12.

III. REGULATORY PARADIGM FOR ESTABLISHING TECHNICAL CRITERIA

13. There are two basic questions before us with respect to technical criteria for terminal equipment. First, we must determine whether, in light of the competitive maturity of the terminal equipment market and the concomitant ability, interest, and motivation of terminal equipment manufacturers to ensure their products do not harm the public switched telephone network, there is a continued need for technical criteria in order to protect the public switched telephone network from specific types of harm. Second, if there is a continued need for technical criteria, we must consider whether it is necessary for the Commission to continue to establish and maintain such criteria as opposed to having industry self-establish the criteria.

A. Need for Technical Criteria to Protect Against Harms to the Public Switched Telephone Network

1. Background

14. Our proposals in the *Notice* were based on positions that emerged from a series of industry fora we held in July 1999 to explore the extent to which regulations in Part 68, other than our hearing aid compatibility and volume control (HAC/VC) rules, may no longer be necessary. In the *Notice*, we tentatively concluded that it remains necessary to retain in our rules proscriptions against certain harms to the public switched telephone network that can be caused by terminal equipment that does not meet technical criteria for network protection.¹² We also proposed that our rules continue to require that telecommunications carriers allow compliant terminal equipment to be connected freely to their networks.

2. Discussion

15. Based on unanimous record support,¹³ we conclude that the four types of harm currently embodied in the Part 68 rules continue to represent a valid enunciation of the types of harm to the public switched telephone network against which the Commission must continue to protect.¹⁴ Part 68 was originally devised to ensure that terminal equipment intended for connection to the public switched telephone network meets the engineering parameters that the Commission has concluded will prevent harms to the network. The four harms that Part 68 is designed to prevent are: (1) electrical hazards to telephone company personnel; (2) damage to telephone company equipment; (3) malfunction of telephone company billing equipment; and (4) degradation of service to persons other than the users of the subject terminal equipment, their calling or called parties. Although the record reflects that actual harm to the network caused by noncompliant terminal equipment is rare, we agree with many commenters that with the advent of advanced technologies that push the limits of twisted copper pair capabilities, it is imperative that the Commission continue to maintain and enforce rules designed to prevent harms to the network. We conclude, therefore, that we should retain in our rules these broad proscriptions against harms to the public switched telephone network.

16. We further conclude, as discussed in detail below, that technical criteria are effective in preventing these harms to the network, and are, therefore, necessary. Nortel, Bell Atlantic, Lucent, and other commenters persuade us that the rapid deployment of new technologies, such as xDSL, requires continued

¹² *Notice*, 15 FCC Rcd at 10533, para. 16.

¹³ Bell Atlantic Comments at 1; BellSouth Comments at 1-3; HP Comments at 1-2; ITI Comments at 2; Lucent Comments at 1-2; Nortel Comments at 3.

¹⁴ TIA Comments at 6; ITI Comments at 2. TIA and ITI are industry associations with a broad membership, including manufacturers, test labs, and LECs. See USTA Comments at 2; Lucent Comments at 2; Phonex Comments at 1.

Commission enforcement of compliance with technical criteria. Moreover, the existence of rules identifying the technical criteria as valid protections against harm to the network gives telecommunications providers the ability to remove harmful equipment, as well as the responsibility to allow the connection of compliant, approved equipment. Finally, as argued by Lucent and Nortel, presumptively valid technical criteria will ensure uniformity and a level playing field that will assure continued robust competition in the market for terminal equipment.¹⁵ These technical criteria for terminal equipment will ensure that manufacturers are able to develop terminal equipment that can operate throughout the country and over all carriers' networks, and that the public switched telephone network which is owned by telecommunications providers, is not harmed by such terminal equipment. Accordingly, we conclude that carriers are only required to permit connection to the public switched telephone network of equipment that is shown to comply with technical criteria designed to prevent the four enunciated harms.

17. One of the purposes of technical criteria is to permit competitive access to the network, and the Commission has succeeded in this goal. We believe compliance with these technical criteria remains necessary because the public switched telephone network is privately-owned by telecommunications carriers, and consumers connect to the public switched telephone network only with consent of the telecommunications provider. Moreover, we agree with commenters that emphasize that we must retain in Part 68 legal authority to permit the disconnection of harmful equipment or, if necessary, the discontinuance of service to customers using harmful terminal equipment, because such a requirement protects the public switched telephone network and other customers.¹⁶ As argued by Bell Atlantic (now Verizon), carriers retain the ultimate responsibility to maintain the quality and integrity of their services to the public, and they must be in a position to take immediate action if that quality or integrity is being compromised.¹⁷

B. Development of Technical Criteria

1. Background

18. In the *Notice*, we tentatively concluded that the public interest would be better served if private industry, rather than the Commission, developed the technical criteria that are necessary to protect the public switched telephone network from harms.¹⁸ We therefore proposed in the *Notice* to use one of several potential industry standards-setting processes.¹⁹ To ensure that the public interest is adequately protected, we proposed to provide for *de novo* Commission review and enforcement, where necessary, of the industry-established technical criteria in the event of an appeal regarding the criteria. We noted our expectation, however, that such Commission involvement would be extremely limited.

19. In our July fora, commenters raised the issue of the extent to which we can legally give the

¹⁵ Lucent Comments at 2. *See also* Nortel Comments at 3.

¹⁶ 47 C.F.R. § 68.108. Bell Atlantic Comments at 2; GTE Comments at 6.

¹⁷ Bell Atlantic Comments at 8.

¹⁸ *Notice*, 15 FCC Rcd at 10533, para. 17.

¹⁹ *Notice*, 15 FCC Rcd at 10535-10536, para. 26. The only technical criteria that we proposed to retain in our rules were those that ensure access to telecommunications and services by persons with disabilities and those that deal with network demarcation and inside wire. Demarcation issues pertain to the location of the dividing point between LEC-controlled telephone line and customer-controlled telephone line. Inside wire issues pertain to requirements concerning customer-owned line. Both of these matters affect a number of consumer and competitive issues including competitive access.

force of law to privately developed technical criteria.²⁰ As we stated in the *Notice*, the Commission's authority to establish technical criteria to prevent harms to the public switched telephone network and to approve terminal equipment prior to attachment of such terminal equipment to the public switched telephone network arises out of section 151 of the Communications Act. Section 151 charges the Commission with the mission to "to make available . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities . . ."²¹ In addition, the Commission relied upon several other provisions of the Communications Act of 1934 when it originally implemented Part 68.²² Finally, as we stated above, in the Telecommunications Act of 1996 (1996 Act), Congress directed the Commission to examine its rules every two years and repeal or modify those found to be no longer in the public interest.²³

2. Discussion

20. We conclude that the statutory authority upon which the Commission relied to implement Part 68 in the first instance does not *require* that the Commission establish the technical criteria with which terminal equipment must comply in order to prevent harms to the network. Instead, this statutory authority *permits* the Commission to adopt reasonable regulations to ensure that terminal equipment does not cause harms to the public switched telephone network, consistent with the public interest. Moreover, the 1996 Act mandates that we repeal or modify rules where market forces make the rules no longer necessary. Accordingly, we adopt our tentative conclusion that consumers and the industry are better served by industry rather than Commission development of technical criteria for terminal equipment. Although we find that technical criteria remain necessary, we find that it is in the public interest to privatize development of the specific technical criteria for preventing harms to the public switched telephone network. While we have concluded in the foregoing section of this Order that our rules should continue to identify and prohibit specific harms to the public switched telephone network by terminal equipment, we are convinced that it is not necessary for the Commission to be responsible for developing and maintaining these technical criteria. In light of these legal parameters, we adopt our tentative conclusion that we have the legal authority to give presumptive validity to the technical criteria adopted by the industry standards body, as discussed below.

21. In determining whether the Commission or private industry is best suited for maintenance and development of technical criteria, we weigh the potential harms to the network when Commission oversight is removed from the development process against the fact that the industry possesses the necessary expertise and incentive for development of new technical criteria and the speed in which the industry, as opposed to the Commission, can establish required technical criteria – especially for advanced technologies.²⁴ We recognize, as argued by ITI, that in today's telecommunications networks, harm to the network does not occur with any significant frequency.²⁵ There is little record evidence of harm to the network caused by terminal equipment

²⁰ See, e.g., Federal Communications Commission Public Fora on Deregulation/Privatization of Equipment Registration and Telephone Network Connection Rules, July 12-13, 1999, ("Record") at 75, 78.

²¹ 47 U.S.C. § 151. See also *North Carolina Utilities Commission v. FCC*, 537 F.2d 787, 793-94 (4th Cir. 1976).

²² The provisions of the Communications Act of 1934 upon which the Commission relied to initiate the Part 68 program included Sections 4(i), 4(j), 201-205, 215, 218, 313, 314, 403, 404 and 602. See *Proposals for New or Revised Classes of Interstate and Foreign Message Toll Telephone Service (MTS) and Wide Area Telephone Service (WATS)*, Docket No. 19528, First Report and Order, 56 FCC 2d 593, 613 (1975)(*Part 68 First Report and Order*).

²³ See *supra* para. 1.

²⁴ GTE Comments at 2.

²⁵ ITI Comments at 1.

other than inside wire.²⁶ The fact that such harms rarely occur is, we believe, a testament to several factors. First, manufacturers and test laboratories, as well as telecommunications carriers, possess relevant expertise in the criteria needed to prevent harms to the public switched telephone network.²⁷ In fact, industry standards setting organizations are often the primary source for updates to the Commission's Part 68 rules. Telecommunications providers,²⁸ manufacturers, and test laboratories have worked together to identify technical criteria, and the Commission has mandated these technical criteria through its rulemaking process and enforced the criteria through testing and registration procedures. For instance, in the technical criteria for hearing aid compatibility requirements, Commission rule 68.316, the Commission refers to a specific technical standard for hearing aid compatibility published by TIA.²⁹ Second, responsible manufacturers have a vested interest in producing equipment that does not harm the network.³⁰ Manufacturers have persuasively argued that their customers would not tolerate equipment that did not perform well, and that if their terminal equipment were identified as harmful to the public switched telephone network the manufacturers would quickly lose their standing with customers.³¹ Third, industry has every incentive to establish criteria for new technology on an expedited basis. We are convinced that industry rather than Commission development of technical criteria will decrease development time and allow manufacturers to bring innovative consumer products, especially for the provision of advanced services, to the market on an expedited basis. This expedited process should benefit consumers by lowering the costs of terminal equipment and by ensuring that new technologies are widely available.

22. Accordingly, we conclude that any standards development organization (SDO), accredited under the ANSI Organization Method or the Standards Committee Method, can establish technical criteria for terminal equipment pursuant to ANSI consensus decision-making procedures, and, as discussed in detail below, submit such criteria to the Administrative Council for Terminal Attachments established by industry. As discussed in detail in Section III.B.2.C of this Order, the Administrative Council would review the criteria only for supporting documentation from the SDO certifying that the submitted technical criteria are not duplicative or in conflict with any other existing technical criteria required for terminal equipment. The Administrative Council must publish the submitted criteria as technical criteria for terminal equipment. Upon publication, the Commission would consider the technical criteria to be presumptively valid such that they comply with the rules for proscribing harm to the network, subject to *de novo* review on appeal.

23. We are convinced that allowing any ANSI-accredited standards development organization to submit technical criteria for terminal equipment will permit the industry to continue with the cooperative nature of the procedures for development of technical criteria and voluntary standards that they have now. We emphasize that today, as in the past, standards development organizations have been primarily responsible for the technical criteria for terminal equipment that exist today. Standards organizations generally specialize in

²⁶ E.g., BellSouth discussed network interference problems caused by inside wire, but such issues are not affected by our decisions herein. BellSouth Comments at 4-5.

²⁷ Bell Atlantic Comments at 1; GTE Comments at 1-2; SBC Comments at 1; TIA Comments at 4; ATIS Comments at 2.

²⁸ In this Order we change the language of Part 68 making the rules applicable to providers of wireline telecommunications rather than the outdated term "telephone company," *see infra*, paras. 74-76.

²⁹ Section 68.316 states, "A telephone handset is hearing aid compatible for the purposes of this section if it complies with the following standard, published by the Telecommunications Industry Association, copyright 1983, and reproduced by permission of the Telecommunications Industry Association. 47 C.F.R. § 68.316.

³⁰ See ATIS Comments at 4.

³¹ E.g., Record at 278-280.

subject areas and cooperate with each other and, as stated in the *Notice*, we have no intention of disrupting the ongoing processes.³² At the same time, this structure will place responsibility on a single gatekeeper Administrative Council to ensure uniformity and to refer conflicts in technical criteria back to the originating SDO for resolution.

24. *Legal Status of Technical Criteria.* We adopt our tentative conclusion that Commission reliance on private industry for the adoption and publication of technical criteria that would be enforceable by this Commission, to the extent that they comply with the rules proscribing harm to the public switched telephone network, does not raise issues with the applicability of the Administrative Procedure Act (APA)³³ or other Federal statutes pertaining to rulemaking proceedings.³⁴ We agree with TIA that although private industry would be developing presumptively valid technical criteria pursuant to our rules and subject to our *de novo* review, the Commission is not itself establishing technical criteria, nor is industry acting as the agent of the Commission.³⁵ This conclusion is consistent with the Commission's decision in the *Third Advanced Services Report and Order* where we determined that we would rely on the ANSI accredited standards development organization, T1E1.4, to develop spectrum compatibility standards pertaining to the network side of the demarcation point. We determined that because T1E1.4 has broad-based industry representation and years of experience developing these standards, the Commission would rely on that organization for spectrum compatibility standards and for fair and open practices in the deployment of advanced services technology. In that proceeding, we reiterated our general belief that industry standards bodies, rather than the Commission, should create acceptable standards for deployment of advanced services.³⁶ We established broad principles for Committee T1E1.4 to follow, but did not adopt any specific technical standards developed by the committee for inclusion in our rules. Accordingly, we conclude that the APA and other federal statutes pertaining to rulemaking procedures are not applicable to industry adoption of technical criteria for terminal equipment. This is so because, when the industry adopts technical criteria for terminal equipment, it will not be adopting a rule. Rather, it will be making a private interpretation of a Commission rule prohibiting harms caused by terminal equipment to the public switched telephone network.³⁷ In effect, conformity with the technical criteria establishes a rebuttable presumption that the equipment complies with our rules proscribing harm to the public switched telephone network.³⁸ Any final interpretation with respect to compliance would remain

³² *Notice*, 15 FCC Rcd at 10538, para. 34.

³³ 5 U.S.C. § 553 (b).

³⁴ *Notice*, 15 FCC Rcd at 10536, paras. 27-28.

³⁵ TIA Comments at 8.

³⁶ *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd. 20,912 at 20993-20994, para. 186 (1999) (*Advanced Services Third Report and Order*).

³⁷ Under the National Technology Transfer and Advancement Act of 1995, federal agencies are required to utilize technical standards that are adopted by voluntary consensus standards bodies and to use those standards "as a means to carry out policy objectives or activities determined by the agencies . . ." See 15 U.S.C. § 272(d)(1).

³⁸ The Commission has previously relied upon presumptions of validity, adopted in rulemakings, to streamline its regulation. For example, Commission rules provide that a foreign carrier from a WTO country seeking Commission approval of its entry into the U.S. market is afforded a rebuttable presumption that it is eligible for entry. See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 95-22, Report and Order and Order on Reconsideration, 13 FCC Rcd 23891 (1997) (*Foreign Participation Order*), Order on Reconsideration, FCC 00-339 (rel. September 19, 2000). As a further example, Commission rules also provide that (continued....)

with the Commission through a *de novo* review and enforcement procedure, should a party file a valid complaint with the Commission, or should the Commission act upon its own motion.

C. Structure for Industry Development of Technical Criteria

25. *Background.* In the Notice, we proposed three options for relying on private development of technical criteria to ensure that terminal equipment connected to the public switched telephone network does not cause any of the four prescribed harms. The three proposals were: (A) Commission identification of a “gatekeeper” Standards Development Organization (SDO) that will establish and publish binding technical criteria for terminal equipment developed pursuant to American National Standards Institute (ANSI) procedures for consensus bodies; (B) adoption of a presumption that terminal equipment that complies with technical specifications established by any national standards-setting organization will not cause harms and that any terminal equipment meeting any such standard could be connected to the public switched telephone network; or (C) incorporation into this Commission’s rules by reference, through the APA rulemaking process, to specific standards developed by national standards organizations.³⁹

26. In the Notice, we requested parties to submit their proposals for the manner in which the gatekeeper SDO should be structured. We stated that we would not specify any particular format for the gatekeeper.⁴⁰ In their comments, and more thoroughly in *ex parte* communications provided at the request of the Commission’s staff, TIA and ATIS explained that some of the functions outlined for the gatekeeper SDO in the Notice are inconsistent with functions of an ANSI-accredited standards development organization. Each party suggested that the gatekeeper should be a committee separate from standards development organizations.

27. In the Notice we tentatively concluded that ANSI accreditation of the organizations involved in establishing technical criteria for terminal equipment is essential because the ANSI procedures are a benchmark for consensus decision-making, and include both appeal and auditing procedures.⁴¹ ANSI accredited organizations are obliged to have balanced representation on the committees that develop standards.⁴² ANSI procedures for due process are applicable to all standards developers that ANSI accredits.⁴³ ANSI procedural criteria include the requirement that “participation shall be open to all persons who are directly and materially affected by the activity in question.”⁴⁴ We stated in the Notice that we intend for the

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price cap local exchange carrier tariff filings are subject to a rebuttable presumption that they are reasonable so long as they fall within the parameters set forth by the Commission for such filings. *See, e.g., In the Matter of Accounting for Judgements and Other Costs Associated with Litigation*, CC Docket No. 93-240, Report and Order, 12 F.C.C.R. 5112 (1997). In effect, these deregulatory actions provide a “safe harbor” where the entry application of the foreign carrier or tariff filing of a LEC is presumptively valid so long as the entity involved meets certain requirements. In this Order, the Commission presumes that the private industry-established technical criteria comply with an agency rule, i.e., not causing harm to the network. This regulatory treatment is appropriate because this Order (like the orders that established the regulatory presumptions mentioned above) sets forth the basic requirements that govern private industry’s technical standard-setting activity such that the technical standards that are established give reasonable assurance of conformity with the Commission’s rule prohibiting equipment harmful to the network.

³⁹ Notice, 15 FCC Rcd at 10534, para. 23.

⁴⁰ Notice, 15 FCC Rcd at 10538, para. 34.

⁴¹ Notice, 15 FCC Rcd at 10542, para. 45.

⁴² TIA Comments at 6; “Procedures for the Development and Coordination of American National Standards,” American National Standards Institute (*ANSI Procedures*) § 1.2.2.

⁴³ *ANSI Procedures* §§ 1.1 and 1.2.

⁴⁴ *Id.* § 1.2.1.

gatekeeper to make its consensus processes open to all interested parties. We sought comment on whether it is necessary for us to impose additional requirements on the gatekeeper other than the standard ANSI requirements to ensure these goals.⁴⁵

28. Pursuant to ANSI procedures, an entity that develops standards may be accredited under one or more of three methods for developing evidence of consensus: (1) the Organization Method, (2) the Standards Committee Method, and (3) the Canvass Method. The Organization Method is most often used by associations that have, among their other activities, an interest in developing standards.⁴⁶ The Standards Committee Method is most often used when a standard affects a broad range of diverse interests or where multiple associations or societies with similar interests exist.⁴⁷ The primary operational difference between the Organization Method and the Standards Committee Method is that, in the latter, ANSI generally requires the entity to be divided into a consensus body and a secretariat. The functions of the secretariat include overseeing the consensus body's compliance with ANSI criteria and administrative functions in connection with the development and approval of standards. The Canvass Method provides that due process be used to determine consensus only after the draft standard has been developed.⁴⁸ Thus, development of the draft standard for which consensus is sought under the Canvass Method does not necessarily include broad and open participation as does the other two accreditation methods.

29. ANSI due process procedures include:

- The right of any person (organization, company, government agency, individual, etc.) with a direct and material interest to participate by expressing an opinion and its basis, having that position considered, and appealing if adversely affected.
- No undue financial barriers to participation, no conditions upon participation based on organization membership, and no unreasonable requirements for technical qualifications, etc.
- A requirement that the standards development process includes a balance of interests and that it not be dominated by any single interest category.
- A requirement to actively seek and fully consider appropriate, representative user views including individuals and organizations.
- A requirement that written procedures shall govern the methods used for standards development and shall be available to any interested person.
- A requirement that the written procedures shall contain an identifiable, realistic, and readily available appeals mechanism for the impartial handling of substantive and procedural complaints regarding any action or inaction.
- Notification of standards activity shall be announced in suitable media; comment periods are specified.
- A requirement that prompt consideration shall be given to the written views and objections of all

⁴⁵ Notice, 15 FCC Rcd at 10542, para. 45.

⁴⁶ ANSI Procedures Annex E, §E-1.

⁴⁷ *Id.*, § E-2.

⁴⁸ *Id.*, § E-3.

participants; an effort shall be made to resolve objections; each objector shall be informed of the appeals process.

- International standards shall be taken into consideration.
- The principle that it is generally not acceptable to include proper names or trademarks of specific companies in a standard, but a patented item may be used in a term if technical reasons justify this approach.

30. *Discussion.* We find the arguments presented by nearly all commenters regarding the advantages of having a single source for technical criteria to be persuasive. As commenters argue, using a single organization eliminates the potential for conflicting technical criteria and reduces the possibility of confusion, thereby ensuring uniform national criteria.⁴⁹ Uniformity of the technical criteria is essential for equipment manufacturers and their customers, because the presence of conflicting, multiple criteria adds complexity, confusion, and cost to the design and development of products, particularly where terminal equipment components or devices are integrated with other terminal equipment to create different stand-alone devices.⁵⁰ In addition, under the structure outlined in this Order, all terminal equipment technical criteria will be developed under the fair and open processes required for ANSI accreditation.⁵¹ Finally, the process for establishing technical criteria for terminal equipment would be accomplished with due process comparable to a Commission rulemaking proceeding, but in a manner faster and more responsive to industry innovation.⁵²

31. We adopt TIA's proposal that we require industry to establish an Administrative Council for Terminal Attachment (Administrative Council). We find merit in TIA's and ATIS's arguments that the entity responsible for publishing the technical criteria should be a committee or some other organization rather than a standards development body. According to the structure outlined in this Order, the entity should not be a standards development organization because it will not be developing standards. Its functions will be administrative in nature. It will be a committee of interested industry experts that will, subject to our guidelines and procedures adopted herein, perform the functions of publishing technical criteria proposed by ANSI-accredited SDOs and, as discussed in Section IV.C of this Order, maintain a database of approved terminal equipment.⁵³

32. We further conclude that the Administrative Council should be convened by a suitable private industry sponsor or sponsors and that it should operate under the auspices of such sponsor. We disagree with

⁴⁹ E.g., TIA Comments at 7, SBC Comments at 1-2, ITI Comments at 2-3, USTA Comments at 4-5, ATIS Comments at 4-5, Nortel Comments at 4-5, Bell Atlantic Comments at 2-4, GTE Comments at 3, Lucent Comments at 2-3, and Phonex Comments at 5.

⁵⁰ ITI Comments at 3.

⁵¹ Requiring that a single organization ultimately publish all technical criteria (Option A as described in the *Notice*) corrects the disadvantages of Option B (the proposal to permit any standards development organization to establish technical criteria) observed by many parties: "Option B does not achieve the Commission's stated objectives. Traditional standards-setting organizations may not be open to everyone; uniform national standards may not always be achieved; costs to manufacturers and consumers may be increased. These disadvantages are fatal..." SBC Comments at 3-4.

⁵² ATIS Comments at 5.

⁵³ Standards development organizations that are not ANSI-accredited may develop criteria for the interconnection of terminal equipment, however, they must put these criteria through an ANSI-accredited process prior to submitting them to the gatekeeper.

TIA's suggestion that this Commission should be the *de facto* sponsor of the Administrative Council.⁵⁴ As discussed *supra*, private industry is well equipped to take over all functions except enforcement and final appeal processes. Accordingly, we choose a sponsor for the Administrative Council based upon the principles outlined in the Notice for the gatekeeper itself. The qualities of the gatekeeper outlined in the Notice are equally applicable to the sponsor function.⁵⁵

33. We find that the industry Administrative Council model is the one best able to ensure continuity in the development of technical criteria for terminal equipment while, at the same time, enabling the industry to develop rapidly equipment for the provision of advanced services. We are confident that this model also enables the Commission to ensure the continued protection of the public switched telephone network. We agree with those commenters suggesting that permitting industry to develop technical criteria for terminal equipment benefits all segments of the industry and consumers alike and therefore it is in the public interest.

34. For all of these reasons, we adopt the industry Administrative Council model for overall administration of technical criteria for terminal equipment. First, the Commission bears ultimate responsibility for dispute resolution of the model detailed herein and sets, in this Order, broad objectives and policies governing the prevention of harms to the public switched telephone network by terminal equipment that will remain embodied in the Commission's rules.⁵⁶ As supported in this record, this model calls for a structure that has a single administrative body that, in many respects, assumes the role that the Commission has served with regard to Part 68. Although the Administrative Council does not, itself, establish technical criteria, the Administrative Council publishes technical criteria for terminal equipment submitted to it by ANSI-accredited standards development organizations. As discussed herein, upon publication the criteria become the presumptively valid technical criteria for terminal equipment. The Administrative Council is also responsible for operation and maintenance of a database of approved equipment. Initially, the Administrative Council shall have a sponsoring organization that may be responsible for the administrative functions of the Administrative Council. The Administrative Council, does not, however, report to the sponsoring organization. Instead, the Administrative Council is subject only to the control of industry. Finally, in the following sections, we describe in more detail the structure of and role to be played by the various entities.

35. We conclude, however, that this committee is not a Federal Advisory Committee (FAC).⁵⁷ USTA's proposal for a FAC does not meet our regulatory goals in this proceeding. Establishing a FAC would not achieve our goals of reduced governmental involvement in the standards process and expedited development of technical criteria for new technology. A FAC would require direct Commission participation in the process of developing standards. Our goal is to minimize our participation where it is no longer necessary in the public interest, continuing only to enforce and review technical criteria *de novo* if market forces and the industry's consensus process do not satisfactorily address the concerns of a segment of the industry.

⁵⁴ TIA September 26, 2000 *Ex Parte*.

⁵⁵ Notice, 15 FCC Rcd at 10541, para. 43.

⁵⁶ See *supra* paras. 15-17.

⁵⁷ See Federal Advisory Committee Act, 5 U.S.C., App. (1988) (FACA).

1. Sponsoring Organization for the Administrative Council for Terminal Attachments

a. Purpose and Responsibilities of Sponsoring Organization

36. *Background.* Although in the *Notice* we did not propose a specific structure for the Administrative Council, we stated that no matter what structure we ultimately decided was in the public interest, it is not our intention to modify the existing industry standards setting process.⁵⁸ As stated above, the record in this proceeding makes clear that not only should industry standards development functions remain separate from the functions of a gatekeeper committee or organization, in most instances, organizations that function in a manner similar to that we proposed for the gatekeeper are often sponsored by industry associations such as the Telecommunications Industry Association (TIA) or Alliance for Telecommunications Industry Solutions (ATIS). These sponsoring associations often perform administrative or secretarial functions on behalf of industry committees and fora similar to the gatekeeper proposed in the *Notice*. For these reasons, as described in detail below, we recognize the sponsor and the gatekeeper as two distinct entities. Although in the *Notice* we set out specific criteria for the gatekeeper, we now apply many of these criteria to our selection of a sponsoring organization for the Administrative Council.

37. Under the gatekeeper option discussed in the *Notice*, we proposed to choose the gatekeeper to serve subject to Commission oversight. We tentatively concluded that the designated gatekeeper: (a) must be ANSI-accredited; (b) must be professionally and administratively prepared to take responsibility for administration of technical criteria; (c) should be experienced with technical criteria development; and (d) must follow, and be capable of following, any Commission rules and guidelines for standards development.⁵⁹ We also requested that ideally, commenters would develop a consensus proposal to submit to the Commission.⁶⁰

38. In the *Notice*, we asked for comment on whether the gatekeeper should serve for a specified term, or simply be subject to our right to review our decision should circumstances warrant in the future. We suggested that, on the one hand, by not establishing a term limit, we may be permitting the gatekeeper to be a more stable entity, and thus it may better serve the industry and the public interest by bringing certainty to the process of administration of technical criteria and by attracting participants with a deep commitment, but on the other hand, by establishing a term limit, we pointed out that we would be requiring a regular review of the gatekeeper's performance. The gatekeeper would, therefore, have an ongoing incentive to remain responsive, efficient, and effective.⁶¹

39. *Discussion.* Although the first responsibility of the sponsor is to send out a call to the industry to convene an organizational meeting for the purpose of establishing the Administrative Council for Terminal Attachments discussed below, the primary ongoing purpose of the sponsoring organization will be to provide administrative and secretarial support to the Administrative Council. The sponsor's administrative functions may be as broad or as narrow as the Administrative Council determines. For instance, the sponsor may merely organize and facilitate the Administrative Council's meetings. If the Administrative Council chooses, the sponsor may also operate and maintain the database of approved equipment. As discussed below, the Administrative Council will delineate clearly and publicly the arrangement it enters into with the sponsor. Under no circumstances, however, will the sponsoring organization make substantive decisions regarding

⁵⁸ *Notice*, 15 FCC Rcd at 10538, para. 34.

⁵⁹ *Notice*, 15 FCC Rcd at 10541, paras. 41-43.

⁶⁰ *Id.*, 15 FCC Rcd at 10541, paras. 41-43.

⁶¹ *Id.*, 15 FCC Rcd at 10542, para. 44.

technical criteria for terminal equipment, nor will it in any other way attempt to influence the decision-making process of the Administrative Council or any standards development organization submitting standards to the Administrative Council for adoption as technical criteria for terminal equipment.

40. The sponsoring organization is responsible for ensuring that the industry populates the Administrative Council in a manner consistent with ANSI criteria for a balanced and open membership. We require the sponsor to notify the industry that it intends to establish a Administrative Council with membership that is balanced in terms of the points of view represented. As discussed below, the specific membership will be determined when the Administrative Council establishes its "charter."

41. After the Administrative Council is populated, the sponsor is responsible for fulfilling secretariat functions for the Administrative Council. After the Administrative Council is in being, then its relationship with the sponsor becomes contractual. The Administrative Council may contract with the sponsor to provide the appropriate public notice for its actions and for appeals to it. The Administrative Council may also contract with the sponsor to coordinate the industry's assignment of standards-development projects, and take other actions that will support the Administrative Council's functions and coordination of industry standards-setting processes.

b. Selection of the Sponsoring Organization of the Administrative Council

42. *Background.* In an *ex parte* letter jointly filed by ATIS and TIA, these organizations proposed a cooperative arrangement for sponsoring the Administrative Council.⁶² TIA and ATIS propose that they would initially share the responsibility for creating the Administrative Council. The two organizations proposed that they coordinate the manner in which the initial organizational meeting is convened, host the first meeting, assign an initial chair, and put secretariat support in place.⁶³

43. *Discussion.* We conclude that joint TIA-ATIS sponsorship of the Administrative Council will best serve our goal of ensuring broad-based industry participation in the Administrative Council's activities and responsibilities detailed in the following section. We commend the parties for reaching an agreement that is responsive to our request in the NPRM that commenters propose a consensus arrangement for the entity that will ensure uniformity of technical criteria in this streamlined process.⁶⁴

44. Both TIA and ATIS are well suited to sponsor the Administrative Council. Both organizations have a great deal of experience sponsoring standards organizations and thus have the staff experience and competency to support the activities of the Council detailed herein. We note, moreover, that both parties have agreed to eliminate influence from organizations, including TIA and ATIS themselves, from the Administrative Council. TIA sponsors standards development committees that have participated in developing Part 68 technical criteria since its inception. For example, TIA Committee TR41 has

⁶² Letter from ATIS and TIA to Dorothy Attwood, Chief, Common Carrier Bureau, CC Docket No. 99-216, Biennial Review of Part 68 of the Commission's Rules (dated November 2, 2000) (*Joint ATIS-TIA Ex Parte*).

⁶³ Joint ATIS-TIA November 2, 2000 *Ex Parte* at 1.

⁶⁴ TIA and ATIS offered a lengthy list of specific functions for their joint sponsorship of the Administrative Council in the Joint ATIS-TIA November 2, 2000 *Ex Parte*. While these proposals include many of the functions we are assigning to the sponsors, they are not identical to the rules we establish herein for sponsor functions. To the extent that the TIA/ATIS proposal is conflicts with any of the rules established in this Order, our rules shall prevail.

subcommittees dedicated to all aspects of Part 68 issues.⁶⁵ TIA is ANSI-accredited and its Committees and subcommittees for Part 68 matters have broad-based industry representation. It has been our observation, as Nortel states, that TIA's standards development operations are conducted in an open, consensus-based manner, consistent with ANSI requirements.⁶⁶

45. Likewise, ATIS sponsors and/or provides secretariat services for sixteen technical or standards committees, including Committee T1E1, the standards development organization that addresses standards for advanced technologies. We note that T1E1 has taken the lead in developing standards for the latest generation of terminal equipment based on digital subscriber line (DSL) technology.⁶⁷ In the *Advanced Services Third Report and Order*,⁶⁸ the Commission determined that ATIS Committee T1E1.4⁶⁹ would be the best forum for developing spectrum compatibility standards pertaining to the network side of the demarcation point.⁷⁰ As stated in that Order, T1E1.4 maintains a broad participation list with representatives from all segments of the industry with technical expertise and experience on xDSL access standards.⁷¹

46. We find no merit in Verizon's argument that the Commission did not properly provide notice that we would select a gatekeeper if we determine it is in the public interest to implement this model of technical criteria development.⁷² In the *Notice* we proposed, under the gatekeeper option, to choose a gatekeeper to compile and publish technical criteria for terminal equipment.⁷³ We stated that the gatekeeper would be able to act as a central committee and adopt technical criteria for terminal equipment. We requested comment on which entity, or combination of entities, would best be able to carry out the functions we proposed for the gatekeeper. In fact, the Commission devoted an entire section of the *Notice* to the identity of

⁶⁵ These include TR41.9, which addresses a broad and comprehensive range of technical standards in connection with terminal equipment relating to harms to the network, especially in view of new and innovative technology. TR41.9, as KTL Dallas points out in its Comments at 1-2, has, through the rulemaking process, been a major resource to the Commission on interpretation and development of our current rules. Subcommittee TR41.9 meets four times a year, and includes representatives from carriers, manufacturers, test laboratories, the Canadian government, and the U.S. government. Subcommittee TR41.11 addresses administrative matters such as terminal equipment labeling and customer instructions for terminal equipment certification application. Subcommittee TR41.2 addresses issues pertaining to conformity to regulatory standards for telecommunications equipment. It considers and recommends harmonization of international regulations and standards.

⁶⁶ Nortel Comments at 6-7.

⁶⁷ See, e.g., *Paradyne Corporation Petition of the Signal Power Limitations Contained in Section 68.308(e) of the Commission's Rules*, Order, 14 FCC Rcd 4496 (Network Svcs. Div. 1999).

⁶⁸ See *supra*, n.36.

⁶⁹ T1E1.4 is a working group of Alliance for Telecommunications Industry Solutions (ATIS)-sponsored Committee T1.

⁷⁰ The Commission acknowledged the expertise of Committee T1E1.4 on xDSL access issues, but established a scheme whereby the work of the Committee on spectrum management and spectrum compatibility issues would be subject to oversight by the Network Reliability and Interoperability Council (NRIC), an existing Federal Advisory Committee (FAC), to advise the Commission on the standards developed by T1E1.4. *Advanced Services Third Report and Order*, 14 FCC Rcd. at 20991-20997.

⁷¹ *Id.*, 14 FCC Rcd. at 20993-20994, para. 186.

⁷² Verizon Reply Comments at 3.

⁷³ *Notice*, 15 FCC Rcd at 10538, para. 34.

the proposed gatekeeper.⁷⁴ As discussed below, we indeed received comments from many entities on the identity of the gatekeeper. Moreover, no other parties to this proceeding appear to be unaware that we intended to identify the gatekeeper in this proceeding.

47. *Term Limit for the Administrative Council's Sponsor.* We conclude that it is not necessary to establish a term limit for the Administrative Council sponsor. We agree with Bell Atlantic (now Verizon) that there is value in maintaining continuity in the standards-setting process, and that re-bidding the gatekeeper function at regular intervals could disrupt that process.⁷⁵ We do, however, believe that it would be in the public interest to permit the Administrative Council, after it is well-established and operational, to vote on a regular basis for which sponsoring organization and/or secretariat it will use. Accordingly, beginning four years from the date the Administrative Council begins operations, it has the option to vote to change its sponsoring organization and/or secretariat organization.

48. We are mindful, however, of the need for the Commission to monitor the Administrative Council operations to ensure that no anti-competitive or other discriminatory practices hinder the prompt and fair development of technical criteria.⁷⁶ Accordingly, we will accept substantiated complaints regarding the sponsoring organization's compliance with our rules and policies for review under our complaint procedures adopted herein, and we retain the right to review our determination regarding the identity of the Administrative Council's sponsor at any time.

2. Administrative Council for Terminal Attachments

a. Purpose of the Administrative Council

49. The purpose of the Administrative Council is to act as the clearing-house publishing technical criteria for terminal equipment developed by ANSI-accredited standards development organizations. As stated above, by adopting this approach we ensure that all manufacturers know which terminal equipment technologies can be connected to the public switched telephone network and all providers of telecommunications can deploy services and design their networks to permit connection consistent with these technical criteria. We conclude that the Administrative Council will not make substantive decisions regarding the development of technical criteria.⁷⁷ This conclusion is based in large part on comments we received from TIA and ATIS regarding the industry's suggestions for its process of developing technical criteria.⁷⁸ We agree with these parties that the gatekeeper should be a separate entity from existing standards development organizations.

b. Criteria for the Administrative Council.

50. We conclude that the Administrative Council should be a non-governmental entity that is not controlled or dominated by any particular telecommunications industry segment. The Administrative Council must be fair and impartial. We believe that the separation of the sponsoring organization, the Administrative

⁷⁴ Notice, 15 FCC Rcd at 10541-10542, paras. 41-44.

⁷⁵ Bell Atlantic Comments at 5.

⁷⁶ See, e.g., TIA Comments at 18.

⁷⁷ See Appendix B for specific rules.

⁷⁸ TIA September 26, 2000 *Ex Parte*; Letter from Megan L. Campbell, General Counsel, ATIS, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 99-216, (filed October 2, 2000) (ATIS October 2, 2000 *Ex Parte*).

Council, and standards development functions eliminates any concerns regarding even the appearance of bias on the part of the Administrative Council.

51. The Administrative Council must have a membership fairly balanced in terms of the points of view represented. In meeting this requirement, we anticipate the Administrative Council membership will represent all segments of the industry including local exchange carriers, interexchange carriers, terminal and network equipment manufacturers, test laboratories, and other interested parties. We agree with ATIS that the individual member's industry segment, rather than the office held in industry organizations, such as Committees T1 or TR41, should be counted to ascertain the balance of membership. We require that the Administrative Council limit the number of Administrative Council members to a workable number. This requirement, however, shall not be used to limit arbitrarily participation by any one segment of the industry. In addition, to the extent there is interest among industry members, the Administrative Council is required to rotate the Administrative Council membership to give all interested individuals an opportunity to participate, and to avoid placing undue burden on specific individuals.

c. Functions of the Administrative Council

52. We conclude that the Administrative Council will adopt technical criteria for terminal equipment through the act of publishing criteria developed by ANSI-accredited standards development organizations.⁷⁹ This process will operate as follows: Immediately upon receipt of submitted technical criteria, the Administrative Council will publish a public notice detailing the technical criteria and the standards development organization responsible for its submission. Interested parties will have 30 days to appeal any aspects of the proposed technical criteria to the standards development organization, to the American National Standards (ANS) Board, or to the Commission. Simultaneously with the appeal, the party appealing the proposed technical criteria must provide notice of this appeal to the Administrative Council. If no appeals are filed within 30 days after the Administrative Council's public notice, then the Administrative Council will publish the technical criteria, and the Commission will consider the criteria presumptively valid.

53. The Administrative Council will also be responsible for establishing and maintaining a database of equipment approved as compliant with the technical criteria. The Administrative Council may perform this database function on its own, or may make arrangements with one of the sponsoring organizations to be the administrator of the database. The Administrative Council will assume many of the Commission's current Part 68 functions, including responding to inquiries from the public regarding the technical criteria it has published, including the technical criteria that are currently in the Part 68 rules, and approved equipment. It is within the Administrative Council's discretion to determine the most appropriate way to perform many of these functions. For instance, the Commission receives approximately 60 inquiries per month regarding the proper interpretation and application of the Part 68 technical criteria. We require the Administrative Council to refer such inquiries to an appropriate standards development organization or TCB.

54. The Administrative Council will accomplish these responsibilities by:

- Accepting submissions of proposed technical criteria from ANSI-accredited standards development organizations or committees;
- Ascertaining that the SDO's have made certifications regarding no conflict with existing criteria and applicability to the four harms, as discussed *infra*;
- Providing a public notice to inform industry as thoroughly as practicable of the identity of the proposing SDO and of the proposed technical criteria;

⁷⁹ As discussed *infra*, paras. 70-73, the Council will also offer opportunities for an appeal process through the applicable standards development organizations or through the ANSI appeal process, as appropriate.

- Publishing the SDO submitted criteria thirty days after public notice, thereby making the technical criteria presumptively valid under the Commission's rules.

55. The Administrative Council may undertake any other administrative functions that it deems necessary to coordinate industry's development and review of potential technical criteria. We agree with TIA that these functions, currently performed on an *ad hoc* basis by individuals coordinating among interested standards development organizations, may find a locus in the Administrative Council.⁸⁰ For example, the Administrative Council may provide notice to interested parties of new standards being developed for publication as technical criteria. It may also coordinate, if necessary, which industry SDOs will take on a particular development project, and ensure that all interested parties have notice of the undertaking.⁸¹ We note, however, that the Administrative Council must not engage in standards development, policymaking, or dispute resolution. In order to ensure that the Administrative Council is functioning according to the requirements and principles set out in this Order, the Administrative Council must establish a "charter" that will set forth its functions, its operations, and its standards for providing balanced membership. We require the Administrative Council to make its charter detailing these operations and procedures available to the public and this Commission for review within 60 days after the first official meeting of the Administrative Council.

56. Finally, we conclude that it is not necessary for us to establish specific funding mechanisms for the Administrative Council. We believe that the Administrative Council and the joint sponsoring organizations, TIA and ATIS, are in the best position to determine financing arrangements. We are also confident that they will ensure successfully that small businesses and individuals are able to participate in the standards-setting and to purchase the Council's published standards. We note that TIA and ATIS, in their proposal for a joint Administrative Council sponsorship are considering issues pertaining to funding of the Administrative Council.⁸² Because the relationship between the sponsoring organizations and the Administrative Council will be a contractual one, subject to our overarching policies of accessibility and openness, we leave these matters within the Administrative Council's purview.

57. *Interim, Trial Use, or Exceptions to Criteria.* In the Notice, we proposed that to the extent manufacturers or importers request exceptions or interim criteria for their terminal equipment that does not meet the technical criteria published by the gatekeeper, we would require the gatekeeper to establish an expedited interim standard process. We proposed that this process would require resolution of the requested exception within 60 days. Commenters have pointed out that ANSI procedures include establishment of trial standards for an interim period.⁸³ We conclude that the Administrative Council should make use of these procedures. We do not, however, establish a time limit of 60 days as suggested in the Notice. The record indicates that this may not be sufficient time to analyze the technical issues under the ANSI due process procedures.⁸⁴ Accordingly, so long as ANSI procedures are followed in a manner consistent with the deadlines established therein, we will not establish a shorter time frame in which the Administrative Council must act.

⁸⁰ TIA September 26, 2000 *Ex Parte*.

⁸¹ *Id.*

⁸² See Joint TIA-ATIS November 2000 *Ex Parte*.

⁸³ SBC Comments at 3, TIA Comments at 21.

⁸⁴ SBC Comments at 3.

3. Standards Development Organizations

a. Submission of Technical Criteria to the Administrative Council

58. *ANSI-accredited Process.* We conclude that only standards development organizations that meet the due process requirements for ANSI accreditation for either Organizations or Standards Committees may develop technical criteria for submission to the Administrative Council as valid technical criteria for terminal equipment.⁸⁵ We agree with TIA that this requirement will ensure a broad representation among the individuals working to develop the criteria.⁸⁶ We believe that the representation and careful consideration of comments and exceptions required by ANSI accreditation will be a safeguard similar to our rulemaking processes. While we have concluded that the standards development organizations that develop technical criteria are in no way making rules, because the Commission will give presumptive validity to the technical criteria to the extent that they comply with the rules proscribing harm to the public switched telephone network, subject only to our *de novo* review, we believe the public interest requires these safeguards.

59. The two standards development organizations most involved in Part 68 and related matters, T1E1 and TR41, are ANSI accredited. In addition, our rules do not preclude other ANSI-accredited standards development organizations from developing technical criteria for submission to the Administrative Council for publication. Thus, we conclude that we are not adopting a new process for industry, but instead we are adding new authority to existing industry procedures and functions.

b. Necessary Certifications to the Administrative Council

60. *Certification that New Technical Criteria Do Not Conflict with Established Technical Criteria.* We conclude that the technical criteria presented to the Administrative Council need not have achieved the status of an American National Standard. Some technical criteria, especially those developed for new technology, may not rise to the level of a national standard prior to being appropriate for inclusion in the Administrative Council's technical criteria. However, in order to satisfy the concerns of commenters that new technical criteria not be in conflict with established technical criteria, we require all standards development organizations submitting technical criteria for publication to the Administrative Council to certify that the submitted technical criteria do not conflict with any existing technical criteria. This certification will be the least burdensome and most effective way to ensure uniformity of technical criteria without conflict.

61. *Certification that Technical Criteria are Limited to Four Harms.* The technical criteria that are presumptively valid subject to our *de novo* review must be limited to preventing the four types of harm that are currently represented in our rules.⁸⁷ We agree with commenters that it is still necessary to protect the public switched telephone network from these harms, but on the other hand, the record does not suggest any justification for expanding on these parameters. Accordingly, we require that all standards development organizations submitting criteria for publication to the Administrative Council must certify that the technical criteria are limited to preventing harms to the public switched telephone network.

4. The Commission

62. Although the Commission will no longer be responsible for establishing technical criteria for terminal equipment, with the exception, as discussed below, of those criteria addressing hearing aid

⁸⁵ See *supra* n. 53 (explaining how non-ANSI accredited SDOs can submit criteria)

⁸⁶ TIA Comments at 5-6, 20.

⁸⁷ See *supra* paras. 15-17.

compatibility and volume control requirements as well as inside wiring, we do retain certain responsibilities regarding review of the industry established technical criteria and enforcement of the proscription against causing harms to the network.

a. Retention of Certain Rules Designed to Prevent Harms to the Network and Rules Pertaining to Technical Criteria for Hearing Aid Compatibility and Volume Control

63. *Background.* In the Notice, we specified that our proposals to privatize and streamline the approval of terminal equipment affect technical criteria in Part 68, Subparts B, C, D, and F.⁸⁸ The proposals also affected the technical definitions contained in Section 68.3. Although we tentatively concluded that it was no longer in the public interest for the Commission to continue its direct involvement in terminal equipment approval, we proposed retaining several definitions in Part 68 that are related to other Commission policies outside of terminal equipment interconnection.⁸⁹ Accordingly, we proposed to keep in Part 68 the present definitions of: (a) "demarcation point"⁹⁰ and the related terms "single-unit installations" and "multiunit installations," (b) "essential telephones," (c) "harm," (d) "hearing aid compatible," (e) "Private Radio Services," (f) "Public Mobile Services," and (g) "secure telephones."⁹¹ In addition, we proposed to maintain our direct oversight of, and rules concerning, hearing aid compatibility (HAC),⁹² volume control,⁹³ consumer protection,⁹⁴ and inside wiring.⁹⁵ SBC and BellSouth contend that the Commission should also maintain its Type B power surge requirements.

64. *Discussion.* We are convinced that we should retain the technical definitions contained in Section 68.3. Accordingly, we shall retain in Part 68 the present definitions of: (a) "demarcation point" and the related terms "single-unit installations" and "multiunit installations," (b) "essential telephones," (c) "harm," (d) "hearing aid compatible," (e) "Private Radio Services," (f) "Public Mobile Services," and (g) "secure

⁸⁸ Notice, 15 FCC Rcd at 10536, n.56.

⁸⁹ Notice, 15 FCC Rcd at 10536-10537 at para. 29.

⁹⁰ See, e.g., *In the Matter of Detariffing the Installation and Maintenance of Inside Wiring*, CC Docket No. 79-105, Third Report and Order, 7 FCC Rcd 1334 at n.6; see *supra* notes 4 and 5; See *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets*, *Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services*, WT Docket No. 99-217, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, and *Review of Sections 68.104, and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network*, CC Docket No. 88-57, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, FCC 00-366, released October 25, 2000, (*Competitive Networks Report and Order*).

⁹¹ The definitions of demarcation point, single-unit installations, multiunit installations, essential telephones, harm, hearing aid compatible, Private Radio Services, Public Mobile Services, and secure telephones are codified at 47 C.F.R. § 68.3.

⁹² 47 C.F.R. § 68.4.

⁹³ 47 C.F.R. § 68.318 (c), adopted pursuant to 47 U.S.C. § 227.

⁹⁴ 47 C.F.R. § 68.318 (d), adopted pursuant to 47 U.S.C. § 227, 47 C.F.R. § 68.318 (e), adopted pursuant to 47 USC § 226.

⁹⁵ 47 C.F.R. §§ 68.213, 68.215, 68.2(c)(3); see also 68.3 (defining "demarcation point").

telephones." In addition, as discussed below, we maintain our enforcement mechanisms and rules concerning, hearing aid compatibility, volume control, consumer protection, and inside wiring. These terms and requirements will continue to serve important Commission policies after the privatization of Part 68.

65. Maintaining the term "harm" enables the Commission to monitor terminal equipment approval and ensure that the requirements enumerated in this Order will be satisfied in an expeditious and nondiscriminatory manner. We believe that maintaining this term in Part 68 will not limit the authority of the Administrative Council, TCBs, standards development bodies, or other private entities that we charge with responsibilities in this Order. In addition, the terms "demarcation point," "single-unit installations," and "multiunit installations" are essential to ensure the validity and effectiveness of our inside wiring rules. In January 2000, we released an order adopting inside wiring requirements designed to protect consumers from the degradation of basic telephony service that can be caused by the installation of substandard wiring.⁹⁶ At the time we adopted the rules, we found that the action was necessary to protect against demonstrated problems in the market as it now operates.⁹⁷ We believe that it is necessary for the Commission to retain the rules intended to encourage builders to install quality inside wiring, thereby ensuring that customers will continue to have access to all available communications services, including advanced services that are more demanding on inside wire than traditional voice.⁹⁸

66. As we explain above, we will continue to maintain our hearing aid compatibility and volume control rules. These rules are a critical component of the Commission's requirements intended to ensure that individuals with hearing and speech disabilities have access to telecommunications services in a manner functionally equivalent to someone without such disabilities.⁹⁹ By retaining these rules in Part 68, we also ensure that the Commission is able to continue monitoring and enforcing compliance with these requirements as directed by Congress in Section 255 of the Act.¹⁰⁰ Maintaining the term "hearing aid compatible" is essential to ensure that our requirements are as clear and effective as possible. Finally, the terms "essential telephones," "Private Radio Services," "Public Mobile Services," and "secure telephones" provide necessary clarity and precision to our rules.

67. We are not, however, persuaded by SBC's and BellSouth's argument that we should retain our Type B power surge requirements.¹⁰¹ This Commission amended the Part 68 rules to add Type B surge requirements as part of the effort to harmonize U.S. and Canadian requirements governing connection of terminal equipment to the public switched telephone network.¹⁰² As with all the Part 68 rules that we privatize herein, we are confident that the Administrative Council will maintain our Type B surge requirements as long as is necessary to protect the public switched telephone network from harms. Thus, we conclude that there is no basis to create an exception for these requirements in light of our determination in this Order that

⁹⁶ *Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network*, CC Docket No. 88-57, and *Petition for Modification of Section 68.213 of the Commission's Rules Filed by the Electronic Industries Association*, RM-5643, Third Report and Order, 15 FCC Rcd 927 (2000) (*Inside Wiring Order*).

⁹⁷ *Id.*, 15 FCC Rcd at 936, para. 19.

⁹⁸ *Id.*, 15 FCC Rcd at 932, para. 9.

⁹⁹ Pub. L. No. 101-336, § 401, 104 Stat. 327, 366, 69 (1990) (adding section 225 to the Communications Act of 1934, as amended) 47 U.S.C. § 225.

¹⁰⁰ 47 U.S.C. § 255.

¹⁰¹ BellSouth Comments at 4; SBC Reply Comments at 9.

¹⁰² 47 C.F.R. § 68.302(c); *see Harmonization Order*, 12 FCC Rcd at 19221, at para. 7.

privatizing Part 68 is in the public interest.

b. Commission *de novo* Review of Administrative Council Technical Criteria

68. *Background.* In the *Notice*, we proposed to retain ultimate responsibility to enforce compliance with our rules designed to prevent harms that may be caused by terminal equipment to the public switched telephone network.¹⁰³ We proposed, moreover, that upon appeal we would conduct a *de novo* review of industry-developed technical criteria. We proposed that any final interpretation with respect to compliance would remain with the Commission through this *de novo* review procedure.¹⁰⁴

69. *Discussion.* We establish that an aggrieved party may appeal to the Commission for a *de novo* review of the technical criteria.¹⁰⁵ We anticipate that a complainant may not have a separate procedure, other than those established herein, to appeal an SDO's proposed technical criteria before they go into effect. We leave open the possibility, however, that there may be some circumstances in which such a separate procedure might be appropriate. In the unlikely event that a technical criterion goes into effect that will harm the public switched telephone network, carriers retain the right to disconnect harmful terminal equipment, as discussed *infra*.¹⁰⁶

5. Appeals Procedures for Development of Technical Criteria

a. Background

70. ANSI procedures provide that an SDO must evaluate and respond to public comment on standards under development. Anyone alleging that the SDO has not respected due process principles during the standards development process has a right to appeal in accordance with the ANSI-accredited procedures for the standards developer.

b. Discussion

71. *Appeals of Technical Criteria Before Publication by the Administrative Council.* We adopt our proposal to require a party, aggrieved by an SDO's decision to submit technical criteria to the Administrative Council for publication, to appeal this decision through the SDO's ANSI-accredited appeal procedures. As explained *supra* in Section C.2.c, interested parties will have 30 days to appeal any aspects of the proposed technical criteria to the standards development organization, to the American National Standards (ANS) Board, or to the Commission. Simultaneously with the appeal, the party appealing the proposed technical criteria must provide notice of this appeal to the Administrative Council. If no appeals are filed within 30 days after the Administrative Council's public notice, then the Administrative Council will publish the technical criteria, and the Commission will consider the criteria presumptively valid. These procedures should address the needs of a party that has a direct and material interest in the criteria at issue, as well as a commenter in the standard development proceedings whose interest may not rise to the level of "direct and

¹⁰³ *Notice*, 15 FCC Rcd at 10556, para. 90.

¹⁰⁴ We stated that this proposal made it possible to allow the SDO to establish technical criteria that are presumptively valid without being subject to the Administrative Procedure Act rulemaking requirements. *Id.*, 15 FCC Rcd at 10556, para. 90.

¹⁰⁵ We note that the Commission will consider the published technical criteria to be presumptively valid if not appeals are filed within the 30 period, either with the industry appeals processes or with the Commission.

¹⁰⁶ See *infra* para.120; see also 47 C.F.R. § 68.108.

material.” We conclude that this appeal process alleviates local exchange carrier commenters’ concerns that they may be required to permit connection of terminal equipment that is the subject of appealed criteria.¹⁰⁷

72. *Appeals of Technical Criteria After Publication by the Administrative Council.* If the Administrative Council receives an appeal regarding published technical criteria, the Administrative Council shall refer the proposed technical criteria and the comments back to the submitting SDO. The SDO shall first try to satisfy the objecting party’s concerns, subject to a time limitation imposed by the Administrative Council; if that process is unsuccessful the party filing an objection must exhaust its appeal process through ANSI. If the SDO appeal procedures are completed but are unsuccessful in resolving the objection, the objecting party may file a request for *de novo* review by this Commission, as explained *supra* in Section C.4.b. Regardless of whether an appeal is initiated before or after the Administrative Council publishes technical criteria, the Commission will not recognize technical criteria as presumptively valid until the appeal has been resolved by the SDO, and, if review is sought here, by the Commission.

73. *Appeals of Technical Criteria That Are Former Commission Rules.* If a party files an objection with the Administrative Council to original technical criteria (*i.e.* a former Part 68 rule), the Administrative Council shall coordinate with interested parties to have an ANSI-accredited SDO address the objections under ANSI procedures.

6. Modification of Part 68 Terminology

74. *Background.* In the *Notice* we requested comment on whether the Commission should continue to include in Part 68 the term “telephone company” rather than the term “local exchange carrier.” We tentatively concluded that Part 68 should be amended throughout to change this terminology, including the rule sections that we propose to turn over to the private industry.¹⁰⁸ We noted that the use of the discontinued term “telephone company” has resulted in some confusion as to whether Part 68 applies to competing local exchange carriers (LECs) as well as incumbent LECs.

75. *Discussion.* Although the Commission is privatizing as technical criteria large portions of the scope of the Part 68 rules currently found at Rule 68.2, the fundamental purpose of Part 68 remains the same, *i.e.*, that “the rules and regulations [including the Administrative Council’s technical criteria] apply to direct connection of all terminal equipment to the public switched telephone network, for use in conjunction with all services other than party line services.”¹⁰⁹ Against this background of the scope of Part 68, we conclude that we should change the terminology in Part 68 and in the technical criteria published by the Administrative Council from “telephone company” to “provider of wireline telecommunications.” The term “telephone company” is not defined in the Act and we believe that it is not sufficiently precise. Although we proposed changing the terminology to “local exchange carrier,” upon further consideration, we agree with USTA and Sprint that “local exchange carrier” is not the most appropriate term because it does not capture interexchange carriers (IXCs) and other providers of telecommunications that could be subject to Part 68 obligations if they own that portion of the public switched network to which terminal equipment is attached directly. Accordingly, we replace the language “telephone company” with the phrase “providers of wireline telecommunications” to clarify that all wireline carriers, including incumbent LECs, competitive LECs, IXCs, and other entities that offer wireline telecommunications and whose network may be affected by direct connection of terminal equipment are subject to our rules under Part 68.

¹⁰⁷ See, *e.g.*, BellSouth Reply Comments at 4.

¹⁰⁸ Notice, 15 FCC Rcd at 10547, para. 61.

¹⁰⁹ 47 C.F.R. § 68.2(a)(1).

76. The term “telecommunications” is defined in the Act as “the transmission, between or among points specified by the user, of information of the user’s choosing without change in the form or content of the information as sent and received.”¹¹⁰ Thus, the phrase “providers of wireline telecommunications” clearly encompasses incumbent LECs, competing LECs, IXC, and all other entities that may own the portion of the public switched telephone network to which terminal equipment may be connected directly. The phrase “providers of wireline telecommunications” provides more clarity than the term “telephone company” and will protect the rights of consumers by ensuring that all providers of wireline telecommunications permit connection of approved terminal equipment to their networks.¹¹¹

D. Transition of Commission Responsibilities to Administrative Council Technical Criteria

1. Respective Roles of the Commission and Industry During Transition

77. In the Notice, we sought comment on the best means to transition from the traditional governmental Part 68 functions to private industry responsibility. As proposed in the Notice,¹¹² and as supported by the record,¹¹³ our rules containing Part 68 technical criteria will remain applicable until the Administrative Council publishes the technical criteria codified in Part 68 as its technical criteria for direct attachment of terminal equipment. Thus, the Administrative Council’s initial technical criteria shall be identical to our existing Part 68 technical criteria. Thereafter, our new rules that do not include the detailed technical criteria will go into effect. Our new Part 68 rules will identify the Administrative Council’s technical criteria as presumptively valid and, if complied with, trigger the responsibility of providers of telecommunications to permit terminal equipment connection to the public switched telephone network. We note that during the 180-day transition period set out below, until the Administrative Council publishes the Part 68 rules we transfer to it, the Commission will continue to maintain and enforce all of the current Part 68 rules. As part of this responsibility, the Commission will accept and consider petitions for waiver of Commission rules 68.3212(i) and 68.308(e)(1) as part of the streamlined waiver process for stutter dial tone and ADSL terminal equipment, respectively. Thus, there will be no lapse of protection to the public switched telephone network provided by technical criteria. There is no objection period for these technical criteria, nor do they need to be sponsored by an ANSI-accredited SDO, since they have been developed pursuant to Commission rulemaking proceedings. Our new Part 68 rules will provide that the Administrative Council, thereafter, has the responsibility to maintain, change, or if appropriate, eliminate the criteria, subject to the Commission’s guiding principles and procedural requirements that we establish herein.

2. Schedule for Transition

78. We believe that the transition to the industry Administrative Council model for adoption of technical criteria for terminal equipment, transfer of the Commission’s current Part 68 functions to the new Administrative Council, and as discussed *infra*, the transfer of the current Commission Part 68 equipment registration functions to industry should occur as rapidly as possible, in a manner consistent with the public interest. To this end, we suggest the following transition schedule that sets time periods as outside limits for the completion of each phase of the transition. The transition steps are:

- No later than 30 days after publication of this Order in the Federal Register, TIA and ATIS, as the

¹¹⁰ 47 U.S.C. § 153(43).

¹¹¹ See *infra* Section IV discussing the regulatory paradigm for approval of terminal equipment.

¹¹² Notice, 15 FCC Rcd at 10540, para. 38.

¹¹³ TIA Comments at 14.